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IN THE

Supreme Court of the United States

OCTOBER TERM 1975

No. 75-1437

CAROL C. JOHNSON,

Petitioner,

v.

JOHN J. O'CONNOR and ELIZABETH J. O'CONNOR,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

PETITIONER'S REPLY BRIEF

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BLEED THROUGH

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The taking of my property acquired by adverse possession between 1926 and 1954 was a deprivation of property without due process and equal protection of laws and deprived me of my privilege of trial by due process all guaranteed by Section One of the 14th Amendment of the Constitution of the United States to its citizens.

Former Connecticut Chief Justice Maltbie in his highly esteemed work entitled "Appellate Procedure" sets forth at page 205 (second edition) the following (in reference to due process requisites as applied to conclusions):

> "Brief statements of the principle upon which conclusions are reviewed are that they cannot stand if they are legally or logically inconsistent with the subordinate facts or if they involve some erroneous

> rule of law material to the case or if they are unreasonably drawn from the facts found."

And again, page 8:

> "It is error of law for a trial court * * * to find * * * a conclusion not legally, logically or reasonably supported by the facts found."

Although the former Chief Justice was writing as to Connecticut law it is in fact a statement of fundamental law throughout the United States set up as a standard guide as to what constitutes due process and equal protection of the laws.

This principle is set forth and discussed in the case of *Tracy* v. *Ginzberg* (1907) 205 U.S. 170, 178, in the opinion written by Mr. Justice Harlan reading as follows:

> "Within the meaning of that amendment (referring to the 14th Amendment) a deprivation of property without due process of law occurs when it results from the arbitrary exercise of power, inconsistent with 'those settled modes of proceeding existing in the common and statute law of England before the emigration of our ancestors, and which are shown not to have been unsuited to their civil and political condition by having been acted on by them after the settlement of the country.' "

It is to be noted that this statement is set forth in a case that clearly recognizes the principle that state court can adequately deal with a question of ownership of property and its decision cannot be regarded as a deprivation of property without due process of law simply because there is a denial to one or the other of the parties of his claim

to ownership BUT where the decision is based on a denial of due process in the mode of proceeding that IS a matter to be corrected under the Constitutional mandate requiring due process and equal protection of the laws.

Were I to have been deprived of the benefit of a paper or record title by the Court's refusal to consider the testimony as to whether I had acquired a paper title during the 29-year period (1926-1954) erroneously excluded by unconstitutional proceedings in violation of the Constitutional mandate of due process there would be no question that reversal would be in order.

Where I have been deprived of the benefit of title by adverse possession by the Court's refusal to consider the testimony as to my having acquired title by adverse possession during the 29-year period (1926-1954) erroneously excluded from consideration by the unconstitutional proceedings depriving me of due process and equal protection of the laws in violation of the Constitutional mandate of due process and equal protection of the laws and protection of the privileges and immunities provided for therein the case is equally clear that there should be reversal of the unconstitutionally arrived at judgment.

The respondents' attorney's statement in his answering brief that the Court has decided that I acquired no title by adverse possession is in reliance on a judgment unconstitutionally arrived at and involving only a consideration of the period 1954 and thereafter and falaciously testing that period by the standards of attaining title during that period rather than the correct standard of what one need do during that period to retain title after title had been attained between 1926 and 1954—a wholly different standard, even permitting one to travel and leave the premises vacant (which however was not done herein).

The attorney for respondents has tried to minimize what the loss of the triangular strip means to petitioner by setting forth that the base of the triangular strip involved is just 12.3 feet with a length, along the sides, of approximately 163 feet between the houses.

However, the Court's attention is respectfully called to the main brief, page 4, wherein it is set forth that the whole property becomes practically valueless because with the loss of the triangle it becomes impossible to bring in construction machines and material as in the past for repair and maintenance of the front stucco house and the rear guest house and greatly hampers access to the rear of the front house and the rear guest house.

As to the Findings cited by respondents' attorney they were challenged by petitioner as not being supported by the testimony and in his brief in trying to support Finding 46 he was able to cite only testimony that there was an offer to buy property belonging to defendants BETWEEN THE BUILDING but carefully not stated to be within the triangle and the attorney very wisely refrained from pursuing the subject and did not ask the defendants to state whether they meant land BETWEEN THE BUILDING AND WITHIN THE TRIANGLE.

As to the Findings as to the payment of taxes same were challenged as unfounded as both plaintiff and defendant testified that they had no knowledge of the tax records nor as to what measurements were contained in the tax records and same were excluded on the trial.

As to seciton 52-575 of the General Statutes of Connecticut cited on page 6 of the answering brief the defendants on the trial claimed that they were in entry of the triangle during the period covering March 1, 1967 when all leases expired and the reversions became effective but the

record is clear that they never brought suit within one year (by March 1, 1968) to legalize such claimed entry and were therefore forever barred from attacking plaintiff's title. (See the *Fairweather* v. *St. Marylebone Property Co. Ltd.* case reported [1962] 2 All. E.R. 288—House of Lords—affirming [1961] 3 All. E.R. 560—Court of Appeals.)

In that case involving adverse possession by tenants of the same landlord the reversioners legalized their entry by promptly bringing suit but the necessity of prompt suit after entry to legalize the entry was stressed.

Between October 1, 1954 and March 1, 1967 the defendants were merely trespassers in the triangle and when they became reversioners on March 1, 1967 they failed to legalize entry within one year as required by the Connecticut Statute 52-575 quoted in the answering brief page 6.

CONCLUSION

It is respectfully submitted that the judgment should be vacated and the case should be sent back for retrial.

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